Arch of West Virginia, Inc., a wholly-owned subsidiary of Arch Minerals Corp. *and* United Mine Workers of America, District 17. Cases 9–CA–26891 and 9–CA–26892

September 26, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On February 15, 1991, Administrative Law Judge Leonard M. Wagman issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party filed a brief in opposition to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Arch of West Virginia, Inc., a wholly-owned subsidiary of Arch Minerals Corp., Yolyn, West Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] In its exceptions, the Respondent contends that it has answered the Union's September 1 information request and further information is not in its possession or otherwise available to it. However, as the Union has shown the relevance of the information sought, it need not accept the Respondent's conclusionary statement that such information is unavailable. *Doubarn Sheet Metal*, 243 NLRB 821, 824 (1979). The Respondent has not shown that it has requested any information not in its possession from its parent corporation and sister subsidiaries and that they have refused to provide the Respondent with such additional information. Under these circumstances, the Respondent has failed to demonstrate that such information is unavailable. *United Graphics*, 281 NLRB 463, 466 (1986).

Member Raudabaugh agrees that the Union had a reasonable basis for seeking information that would tend to prove or disprove the existence of a single-employer relationship among the Respondent and the other entities. However, in his view, other information sought by the Union would be relevant only if a single-employer relationship were shown. Accordingly, he would not order that the latter information be supplied at this time. If the Union, upon securing the former information, establishes a single-employer relationship, it can then seek the latter information based on that showing.

James E. Horner, Esq., for the General Counsel.
Joseph M. Price and *Mark Toor, Esqs. (Robinson & McElwee)*, of Charleston, West Virginia, for the Respondent.
Charles F. Donnelly, Esq., General Counsel, Legal Department, District 17, of Charleston, West Virginia, for the Charging Party.

DECISION

STATEMENT OF THE CASE

LEONARD M. WAGMAN, Administrative Law Judge. This case was tried in Charleston, West Virginia, on May 31, 1990. On charges filed by the Union, United Mine Workers of America, District 17, the Regional Director for Region 9, issued a consolidated complaint on December 4, 1989,[1] against the Company, Arch of West Virginia, Inc., a wholly-owned subsidiary of Arch Minerals Corp. The consolidated complaint alleged that the Company had violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by refusing to furnish the Union with information necessary for, and relevant to, the Union's performance of its collective-bargaining function. The Company filed a timely answer, denying that it had committed the alleged unfair labor practices.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Charging Party, and the Company, respectively, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Company, a corporation, mines and distributes bituminous coal at its facilities in Logan County, West Virginia, where during the 12 months preceding issuance of the complaint, it sold and shipped products, goods, and materials valued in excess of $50,000 directly to points outside the State of West Virginia. The Company admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

Since 1985, the Company and its predecessor, respectively, have recognized the Union as the exclusive collective-bargaining representative of a unit of their coal production employees.[2] At all times material to this case, the Company and the Union have been parties to a collective-bargaining agreement, effective from February 1, 1988, until February 1, 1993, covering that unit. Arch Minerals Corp., the Company's parent, is not a signatory to any collective-bargaining agreement with the Union or the United Mine Workers of America.

[1] Unless otherwise stated, all dates refer to 1989.

[2] The agreed appropriate bargaining unit is as follows:

All employees of [the Company] engaged in the production of coal, including removal of overburden and coal waste, preparation, processing and cleaning of coal and transportation of coal (except by waterway or rail not owned by [the Company]), repair and maintenance work normally performed at the minesite or at a central shop[s] of [the Company] and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by [the Company], excluding all coal inspectors, weigh bosses at mines where men are paid by the ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

Article IA, section (g)(2), of the current agreement, limits the contracting out of repair and maintenance work as follows:

> Repair and maintenance work of the type customarily performed by classified Employees at the mine or central shop shall not be contracted out except (a) where the work is being performed by a manufacturer or supplier under warranty . . . or (b) where the Employer does not have available equipment or regular Employees (including laid off Employees at the mine or central shop) with necessary skills available to perform the work at the mine or central shop.

On February 16, the Union filed a grievance in response to the Company's announced intention to subcontract out the repair and maintenance work on dragline buckets at its Ruffner mine. The Company entered into a contract for this work with Kanawha Steel & Equipment Company. The contract with Kanawha required that the Company lease or sublease sufficient land at the worksite to enable Kanawha to perform the subcontracted work. The Union claimed that repair and maintenance work was bargaining unit work. After the Company denied the grievance at the third step, the Union elected to refer the dispute to an arbitrator.

At the first step of the grievance procedure, the Union asked the Company to supply it with the following:

> (1) Copies of any contracts, agreements or memorandums, either pending or in effect reflecting the dates and the parties thereto between Arch of West Virginia and Kanawha Steel Corporation.
>
> (2) Copies of any lease or license agreement, memorandums or any other documents showing the interest of Arch of West Virginia to the property commonly known as the #8 Stock Pile Area or where Kanawha Steel Corp. is currently erecting a shop.
>
> If Arch of West Virginia has sold, transferred or assigned its interest in that property to any other Interest. If so, [we] request copies of such transaction showing the dates and the terms thereof along with the parties thereto and what was the precise nature of the sale, transfer, or assets.
>
> (3) Chart or diagrams showing the relationship between Arch of West Virginia, Ark Land Company, and Arch Minerals.

In response to the Union's request, the Company offered to stipulate that Kanawha Steel Corporation was the contractor selected to perform the disputed work. The Company also offered to stipulate that the #8 stock pile area ''used to be subleased to Amhurst Coal Company and was used as a stockpile area.'' The Company refused to provide the remainder of the information which the Union was seeking, on the ground that it was irrelevant.

After the Company denied the grievance at the third step, the Union sought arbitration. The Union obtained a subpoena from the arbitrator, and with it sought the same information it had requested from the Company earlier. The Company refused to furnish the requested information, contending that it was irrelevant to the grievance.

At the arbitration hearing, the Company stipulated as follows:

> 1. Arch of West Virginia did indeed enter into a written contract with Kanawha Steel & Equipment Company, an outside contractor, to rebuild the dragline buckets.
>
> 2. The Company informed the union of their intent to contract out the rebuilding of the dragline buckets in February, 1989, prior to entering into the contract with Kanawha Steel.
>
> 3. Arch of West Virginia subleased a piece of property for Kanawha Steel to set up a bucket barn and that is where they are doing their work.
>
> 4. This grievance does not involve an issue of successorship.
>
> 5. None of the work challenged had been performed at the time the grievance was filed.
>
> 6. The Company does not intend to state or claim that the Arbitrator does not have jurisdiction to determine whether or not the contracting out of the work that was to be done at the time of the filing of the grievance or has since been done, is a violation of the agreement.

In his opinion and decision, the arbitrator noted the Union's request for information and the Company's failure to comply with his subpoena. The arbitrator also asserted that he had found that the requested information was ''not necessary in order to render a decision in this matter.'' The arbitrator sustained the grievance, finding that the Company's attempt to subcontract out the disputed work violated the collective-bargaining agreement.

From 1974 until 1988, the Union had collective-bargaining agreements with Hansford Coal Company, Pratt Mining Company, and King Powellton Mining, Inc. The three companies and a fourth, Ford Coal Company, whose employees were not represented by the Union, were the properties of Lawson W. Hamilton Jr. In 1988, the collective-bargaining agreement covering three of Hamilton's companies expired. During the remainder of 1988 and into 1989, the Union and Hamilton negotiated for a new contract, without reaching agreement.

In the summer of 1989, Robert E. Phalen, the Union's president, heard rumors that Lawson Hamilton Jr. intended to sell his five companies. Phalen's duties as the Union's president include the administration and enforcement of its collective-bargaining agreements.

On June 15, Hamilton and Arch Minerals Corp., the Company's parent, executed an agreement for purchase and sale of the four companies and a fifth, Greater Kanawha Industries, Inc. According to the agreement, the actual transfer of Hamilton's companies to Arch Mineral Corporation would occur on July 31. By letters dated July 20, addressed, respectively to Hansford Coal Company, Pratt Mining, and King Powellton Mining, Phalen sought information from Hamilton about the reported transfer of ''operations.'' Not until October, did Phalen receive a response to these letters.

On August 2, Phalen came on a report in a Charleston, West Virginia newspaper, confirming most of the rumor. The newspaper item announced that on Monday of that week, Lawson Hamilton Jr. had sold Hansford Coal, King Powellton Mining, Pratt Mining, and Ford Coal Company to ''the Arch Minerals Corp., the parent of Arch of West Virginia Inc.''

In a letter dated August 9, addressed to Ben H. Daud, the Company's president,[3] Phalen, on behalf of the Union, sought information regarding the possible sale of the Hamilton coal mining operations and facilities to the Company ''or a parent, affiliate or subsidiary thereof . . . .'' By letter dated August 16, President Daud denied that the Company had acquired any of the Hamilton properties, or any interest in them. He also denied that he had any information regarding their ''recent acquisition.'' Daud went on to suggest that Phalen direct his inquiry to ''Gerald Peacock, President, Catenary Coal Company.'' Also, in early August, in a conversation with Hamilton regarding the sale of Hamilton's properties, Phalen heard mention of Catenary Co.

In a letter, dated September 1, a copy of which I have attached to this Decision and Order as Appendix ''B,'' Phalen, on behalf of the Union, reiterated by reference his request of August 9. He also asked that the Company supply designated documents and provide responses to interrogatories regarding Arch Minerals Corp., the Company, Catenary Coal Company, Red Warrior Coal Co., and Linville Coal Co.

Phalen included the reference to Linville Coal Co. because he had heard that Catenary had transferred a coal processing operation from Pratt Mining Co. to Linville. Phalen was attempting to ascertain Linville's relationship with Catenary Coal Company.

By letter dated September 13, President Daud, on behalf of the Company, rejected the Union's request, on the ground that the requested information was ''not relevant to any existing issue between our company and the [Union].''

On September 1, Phalen sent a request to Catenary Coal Company for information about the sale of the Hamilton. By letter dated September 13, President Gerald D. Peacock responded. In the first paragraph of his letter, Peacock advised Phalen that:

> [O]n July 31, 1989, Red Warrior Coal Company, Rensford Processing, Inc., Paint Creek Terminals, Inc., and Red River Valley Coal Company, all wholly-owned subsidiaries of Catenary Coal Company, each purchased certain assets of Lawson W. Hamilton, Jr., Hansford Coal Company, Ford Coal Company, Greater Kanawha Industries, and/or Pratt Mining.

President Peacock went on to explain why he believed the Union was not entitled to any of the information requested in its letter of September 1. He concluded with a refusal to provide it.

President Phalen viewed the information he was seeking as relevant and important to the Union's interest in implementing article II of the current collective-bargaining agreement, entitled: ''Job Opportunity and Benefit Security (Jobs).'' Paragraph A of article II covers job opportunities ''at any existing, new or newly acquired non-signatory bituminous coal operation of [the Company].'' Paragraph B covers employment opportunities when a signatory employer leases, subleases, or licenses out any of its bituminous coal lands. According to Phelan's testimony before me, the Union was seeking information ''that is necessitated to show as to whether or not our folks would have an opportunity at additional job opportunities relative to that language under Article II of the contract itself.'' The key to the additional employment opportunities was the relationship between the Company, Arch Minerals Corp., Catenary Coal Company, and Catenary's subsidiaries.

An additional motive for Phalen's letter of September 1 to the Company, was article IA(f) of the current collective-bargaining agreement, entitled ''Application of This Contract to the Employer's Coal Lands,'' which provides:

> As part of the consideration for this Agreement, the Employer agrees that this Agreement covers the operation of all the coal lands, coal producing and coal preparation facilities owned or held under lease by them, or any if them, or by any subsidiary or affiliate at the date of this Agreement, or acquired during its term which may hereafter (during the term of this Agreement) be put into production or use. This section will immediately apply to any new operations upon the Union's recognition, certification, or otherwise properly obtaining bargaining rights. Notwithstanding the foregoing, the terms of this Agreement shall be applied without evidence of the Union representation of the Employees involved in any relocation of an operation already covered by the terms of this Agreement.

On September 28, Phalen met with Gerald Peacock, who represented himself as the president of Catenary Coal Company, and Tim Brown, who said he was the vice president of the same company. At the same time, Brown asserted that he was also president of Catenary subsidiaries, Red Warrior Coal Co., Rensford Processing, Inc., Paint Creek Terminals, Inc., and Red River Valley. Peacock and Brown also advised Phalen that Catenary Coal Company's four subsidiaries had taken over the Hamilton properties, known as Ford Coal Company, Hansford Coal Company, Pratt Mining Company, Greater Kanawha Industries, and King Powellton Mining, Inc. Phalen asked if Ark Land Company, an affiliate of Arch Minerals Corp., was holding the coal lands to be mined by Catenary's subsidiaries. Peacock and Brown answered no, the land was under another company, Clover Lick Land Company. Peacock and Brown told Phelan, what he already knew, that Catenary Coal Company was a wholly owned subsidiary of Arch Minerals Corp.

In a letter dated May 7, 1990, the Company furnished a portion of the requested information. The Company revealed that it had no leases, subleases, or mining contracts with any of companies mentioned in the Union's letter of September 1. The Company limited the remainder of its response to information pertaining to it and its relationship with Arch Mineral Corp. The Company explained in its letter that it did not have any information in its possession regarding those companies and the disposition of the ''Lawson Hamilton Properties.''

I find from President Phalen's testimony, that the information which the Company has provided did not include any information pertaining to the possibility that the Company, its parent, Arch Mineral Corporation, Catenary Coal Company, and Catenary's affiliates, constitute a single employer for the purposes of article II of the current collective-bargaining agreement between the Company and the Union. I further find from Phalen's testimony that without that information, the Union would be unable ''to make a determination as to whether or not the contract . . . would apply to all of Arch's

[3] See Appendix ''A,'' below.

coal lands and operations by virtue of one operator being signatory to that agreement.'' Nor did the proffered information help the Union to understand its rights with respect to Catenary's mining operations at the former Hamilton sites, under paragraph IA(f) of the current agreement.

The record suggests that on September 1, when the Union made its demand for information, a close kinship existed between Arch Minerals Corp., Catenary Coal Company, and the Company. Both Catenary Coal Company and the Company are, and have been since September 1, wholly owned subsidiaries of Arch Minerals Corp. As of September 1, John E. Walton was the Company's vice president and treasurer, and was one of its directors. At the same time, Walton served as Arch Minerals Corp.'s vice president and chief financial officer. Also, on and since June 12, Walton has been a director, vice president, and treasurer of Catenary Coal Company, whose subsidiaries, Red Warrior Coal Company, Rensford Processing, Inc., Paint Creek Terminals, Inc., and Red River Valley Coal Company, each purchased one of the former Lawson Hamilton coal mining entities.

On and after September 1, the Company's corporate secretary, J. N. Quinn was also corporate secretary for Arch Minerals Corp. Two of the Company's corporate assistant secretaries have served Arch Minerals Corp. as corporate assistant secretaries on and since September 1.

All presidents of Arch Minerals Corp.'s operating divisions and subsidiaries attend its annual board meetings, at which they present their respective budgets. In April 1990, the Company's president, Ben H. Daud, attended such a meeting. Also present at that meeting, was President Gerald D. Peacock of Catenary Coal Company, who represented Catenary and its subsidiaries.

B. *Analysis and Conclusions*

1. Case 9–CA–26891

''[T]he grievance arbitration procedure forms an integral part of the collective bargaining process.'' *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983). Consequently, the Board has recognized that the Act, in furtherance of that process, requires that an employer provide a union with requested information which is ''necessary for processing grievances under a collective-bargaining agreement, including that necessary to decide whether to proceed with a grievance or arbitration . . . .'' *Bohemia, Inc*., 272 NLRB 1128, 1129 (1984). Thus, the Company had a statutory duty to provide its employees' collective-bargaining representative with information relevant to the processing of the grievance which the Union filed in response to the proposed subcontracting out of the repairing and maintenance of the dragline buckets at the Ruffner mine.

At the first step of the grievance and at the arbitration step, the Company refused to supply the Union with the requested documents, charts, and diagrams on the ground that the information contained in them was irrelevant to the grievance. The complaint focuses on the Company's refusal to comply with the arbitrator's subpoena. Before me, the Company has renewed this contention.

The Union was entitled to investigate the merits of its grievance while preparing its presentation of evidence for the eventual arbitration hearing. Although the documents, charts, and diagrams which the Union sought might not have provided information bearing directly on the announced subcontracting, they might have afforded leads to assist in obtaining it from other sources. The Union's request for information, as set out in the arbitrator's subpoena, reflected an attempt to ferret out sources of evidence which might support its claim that the announced subcontracting would violate the current collective-bargaining agreement.

Contrary to the Company, the record showed a probability that all the requested information including that pertaining to its possible kinship with Arch Minerals, Corp., its parent, and with Ark Land Company, might have aided the Union in preparing for the arbitration proceeding. Moreover, the circumstances surrounding the subpoena's issuance were such as to apprise the Company fully of the Union's need for the information sought. *Ohio Power Co*., 216 NLRB 987, 995 (1975). It follows, under established Board doctrine, that the Union was entitled to the subpoenaed information prior to the arbitration hearing. *Stephen Oderwald, Inc*., 284 NLRB 277, 279 (1984).

The Company contends that the issue of the Union's entitlement to the subpoenaed information was a matter to be decided by the arbitrator, and not by the National Labor Relations Board. According to the Company's brief (Br. 35), ''[t]he clear weight of authority mandates that issues concerning the disclosure of information in the context of contractual disputes be resolved by the arbitrator.'' However, the Company's brief did not supply any citation to support its position on this issue.

The Court in *NLRB v. Acme Industrial Co*., 385 U.S. 432, 437–439 rejected the contention which the Company now urges before me. The Court held that a Board remedial order requiring an employer to provide information to a union in preparation for an arbitration proceeding ''[f]ar from intruding upon the preserve of the arbitrator . . . was in aid of the arbitral process (385 U.S., at 438).'' The Court went on to hold ''that the Board's order . . . was consistent both with the express terms of the [Act] and with national labor policy favoring arbitration . . . .'' (385 U.S. at 439.) Guided by the Court's holding in *Acme Industrial*, I reject the Company argument here.

That the Company provided a portion of the requested information at the arbitration proceeding or that the arbitrator rendered a favorable decision for the Union did not bar exercise of the Board's remedial authority. For the Union was entitled to receive the relevant information promptly, to assist in its preparation for the pending arbitration, and to assess its chances of success before the arbitrator. Indeed, the Board has held that an employer's failure to provide, on request, information relevant to a union's processing of a grievance was violative of Section 8(a)(5) and (1) of the Act. *Autoprod, Inc*., 265 NLRB 331, 338 (1982); *Murphy Printing Co*., 235 NLRB 612, 617–618 (1978). In sum, I find that the Company, by failing to provide fully and promptly the information requested by the Union, as recited in the arbitrator's subpoena, violated Section 8(a)(5) and (1) of the Act.

2. Case 9–CA–26892

The General Counsel contends that the Union was entitled to the information requested in its letter to the Company, dated September 1, and that the Company's refusal to comply fully and promptly with that request was unlawful. The Company argues that the Union was not entitled to the re-

quested information relating to Arch Minerals Corp. or any of its subsidiaries other than the Company, absent a showing that these firms constitute a single employer. The Company also contends that it cannot be required to furnish such information, where, as here, neither its parent, Arch Minerals Corp. nor the other subsidiaries of its parent are signatory to any collective-bargaining agreement with the Union. I find no merit in the Company's defense of its refusal to provide all the information requested in the Union's letter of September 1.

Under established Board doctrine ''when a union's request for information concerns data about employees or operations other than those represented by the union, or data on financial, sales, and other information, there is no presumption that the information is necessary and relevant to the union's representation of employees. Rather, the union is under the burden to establish the relevance of such information. [Citation omitted.]'' *Bohemia, Inc*., 272 NLRB 1128, 1129 (1984). Further, where a union seeks information to show an alter ego, or single employer relationship, it is not required to prove the existence of such a relationship, rather it is sufficient that the union demonstrates ''an objective factual basis for believing'' that such a relationship exists. *M. Scher & Son, Inc*., 286 NLRB 688, 691 (1987).

Here, the Union has sustained the necessary burdens. As shown by its letters of August 16 and September 1, to the Company, the Union and its president, Phalen, were properly concerned about the effect of the transfer of the Hamilton properties on the employment opportunities of the Company's employees, under articles I, IA and II of the current collective-bargaining agreement. Phalen and the Union recognized that if the Company, together with Arch Minerals Corp., Catenary Coal Co., and the newly acquired companies constituted a single employer for bargaining purposes, the employment rights of the Company's employees might be enhanced. Similarly, the relationship between these companies would also impact on the Union's bargaining obligation on behalf of the Company's employees, under article IA(f) of the contract, regarding work opportunities at mines owned by the Company's affiliates. Thus, the Union and Phalen requested the information recited in their letter of September 1 to assist them in administering and enforcing the collective-bargaining agreement covering the Company's employees. From this, I find that the Union's request for information regarding that relationship ''had sufficient probable and potential relevance here.'' *Maben Energy Corp*., 295 NLRB 149 (1989).

I also find that the record shows that on September 1, the Union had ''an objective factual basis'' for believing that the Company, Arch Mineral Corp. Catenary Coal Co., and Catenary's subsidiaries were affiliated for purposes of article IA(f), and that they constituted a single employer for purposes of article II, of the current collective-bargaining agreement covering the Company's employees. Thus, on September 1, the Union knew that the Company, with which it had a current collective-bargaining agreement, was a wholly owned subsidiary of Arch Minerals Corp. Almost 1 month earlier, the Union's president, Robert Phalen, had read in a local newspaper that Arch Minerals Corp. had purchased four coal mine operating companies, of which three had a collective-bargaining relationship with the Union. Indeed, the three Companies, had been engaged in contract negotiation with the Union during July. During early August, after the final sale of his four properties to Arch Minerals Corp., Lawson Hamilton Jr. told Phalen that Arch Minerals Corp. was the purchaser.

Also, by letter dated August 16, Company President Daud suggested that Catenary Coal Company would be the source of information regarding the disposition of the Hamilton properties. During the same month, Lawson Hamilton Jr., in conversation with Phalen, mentioned Catenary Coal Co. in connection with the purchase of his assets. In sum, Phalen and the Union had an objective basis for believing that the Company, Arch Minerals Corp., Catenary Coal Co., and the former Hamilton companies were so interrelated as to constitute a single employer or at least affiliates, for contractual purposes.

I find that the Union has adequately shown that the information requested in its letter to the Company, dated September 1, was relevant and essential to the performance of its duty as the collective-bargaining representative of the Company's employees. It was the Company's obligation to provide the requested information to the Union. The Company's limited response in May 1990 was wholly inadequate. I find, therefore, that the Company, by failing and refusing to provide all the information requested by the Union in its letter of September 1, violated Section 8(a)(5) and (1) of the Act.[4]

CONCLUSIONS OF LAW

1. The Respondent, Arch of West Virginia, Inc., a wholly-owned subsidiary of Arch Minerals Corp., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, United Mine Workers of America, District 17, is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times since January 1985, the Union has been the exclusive collective-bargaining representative within the meaning of Section 9(a) of the Act for the following appropriate unit:

> All employees of Arch of West Virginia, Inc. engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal and transportation of coal (except by waterway or rail not owned by [Arch of West Virginia, Inc.]), repair and maintenance work normally performed at the mine site or at a central shop[s] of [Respondent] and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by [Arch of West Virginia, Inc.], excluding all coal inspectors, weight bosses at mines where men are paid by the ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

[4] The Charging Party, by motion, sought to reopen the record in this case to introduce additional evidence previously unavailable, regarding the relationship between Arch Minerals Corp. and its subsidiaries. The Company opposed the motion. In view of my disposition of this case, I find it unnecessary to reopen the record. Accordingly, the motion is denied.

4. By failing and refusing to furnish the Union with information requested by it in its letter dated September 1, 1989, and by failing to furnish the Union with information requested in an arbitrator's subpoena issued on or about September 15, 1989, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Company has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Arch of West Virginia, Inc., a wholly-owned subsidiary of Arch Minerals Corp., Yolyn, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with United Mine Workers of America, District 17, as the exclusive bargaining representative of the employees in the following appropriate unit, by refusing to furnish the Union all the information requested in the Union's letter to the Company dated September 1, 1989, and such other information as the Union may request, which is necessary and relevant to the Union's performance of its function as the exclusive bargaining representative:

> All employees of Arch of West Virginia, Inc. engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal and transportation of coal (except by waterway or rail not owned by [Arch of West Virginia, Inc.]), repair and maintenance work normally performed at the mine site or at a central shop[s] of [Respondent] and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by [Arch of West Virginia, Inc.], excluding all coal inspectors, weight bosses at mines where men are paid by the ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, furnish to the Union, in writing, all the information requested in the Union's letter to the Company, dated September 1, 1989, not previously furnished.

(b) Post at its facilities in Logan County, West Virginia, copies of the attached notice marked ''Appendix C.''[6] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Company's authorized representative, shall be posted by the Company immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX A

UNITED MINE WORKERS BUILDING
1300 KANAWHA BOULEVARD E.
P. O. BOX 1313
CHARLESTON, W. VA. 25325

AUGUST 9, 1989

Ben H. Daud, President
Arch of West Virginia, Inc.
P. O. Box 149
Lundale, West Virginia 25631

Re: Information Request/
Lawsun Hamilton Properties

Dear Mr. Daud:

It has recently come to my attention that your company or a parent, affiliate or subsidiary thereof may have purchased the coal mining operations and facilities of Lawson W. Hamilton, Jr. These operations include the Hansford Coal Co., King Powellton Mining, Inc., Pratt Mining Co., and Ford Coal Co. located in upper Kanawha County. As you may be aware the Union and several of Mr. Hamilton's companies have been actively engaged in contract negotiations for a successor agreement to the 1984 National Bituminous Coal Wage Agreement. Needless to say, reports of a sale come as a surprise.

As the Union needs to ensure that any transfer or sale of the operations doesn't negatively impact upon our members' contractual and statutory rights, and to monitor compliance with Article[s] I, IA and II of the NBCWA, this is, with respect to Mr. Hamilton's operations, to request the following relevant and necessary information:

(1) Complete copies of any contract(s), agreement(s) or letter(s) of intent to enter into any contract(s) or agreement(s) with any of Mr. Hamilton's companies regarding or contemplating a transfer of any interest, whether that contract is executory or not, in any producing or processing facilities, operations, lands or equipment.

(2) What date(s) were the contract(s), agreement(s) or letter(s) of intent to enter into any contract(s) or agreement(s) referred to in questions 1 above executed?

APPENDIX B

UNITED MINE WORKERS BUILDING
1300 KANAWHA BOULEVARD E.
P. O. BOX 1313
CHARLESTON, W. VA. 25325

AUGUST 9, 1989

Mr. Ben H. Daud, President
Arch of West Virginia, Inc.
P. O. Box 149
Lundale, West Virginia 25631

Re: Request for Information on
Lawsun Hamilton Properties

Dear Mr. Daud:

This is in response to your August 16, 1989, letter. Although I consider it a needless exercise, I have at your suggestion made a request upon Mr. Gerald Peacock for the information sought to my August 9, 1989, letter to you. I an still awaiting a reply. In any event, this to reiterate my request that you provide this information in a timely fashion; and in addition, this is to request the following information for Arch Minerals Corp., Arch of West Virginia, Catenary Coal Company, Red Warrior Coal Co., and Linville Coal Co. The information requested is as follows:

I. DOCUMENTARY REQUESTS

1. Copies of any leases, subleases and/or mining contracts between or among any of the above noted companies in effect during the term of the 1988 National Bituminous Coal Wage Agreement.

2. Copies of the current Legal Identity Reports filed with EMSHA for any or all of the operations owned, leased, controlled by any of the above noted companies, or in which any of these companies has or had an interest.

3. Copies of all ''Annual Report of Employee Plan'' Form 5500 or any other report in connection with the payment of employee benefits filed with the Internal Revenue Service from 1983 to present.

4. Copies of all notices given to the West Virginia Commissioner of Labor regarding any contract, subcontract, lease or sublease for mining operations on any property owned, leased, or controlled by any of the above noted companies.

APPENDIX C

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with United Mine Workers of America, District 17, as the exclusive bargaining representative of the employees in the following appropriate unit, by refusing to furnish the Union all the information requested in the Union's letter to the Company dated September 1, 1989, and such other information as the Union may request, which is necessary and relevant to the Union's performance of its function as the exclusive bargaining representative:

> All employees of Arch of West Virginia, Inc. engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal and transportation of coal (except by waterway or rail not owned by [Arch of West Virginia, Inc.]), repair and maintenance work normally performed at the mine site or at a central shop[s] of [Respondent] and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by [Arch of West Virginia, Inc.], excluding all coal inspectors, weight bosses at mines where men are paid by the ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, furnish to the Union, in writing, all the information requested in the Union's letter to us, dated September 1, 1989, not previously furnished, which is relevant and necessary to its role as the exclusive bargaining representative of our employees in the bargaining unit.

ARCH OF WEST VIRGINIA, INC.